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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. —

THE UNITED STATES OF AMERICA, PETITIONER

v.

ARTHUR W. MACHEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit in the above case.

OPINIONS BELOW

The memorandum opinion of the District Court of the United States for the District of Maryland (R. 14) is not reported. The opinion of the United States Circuit Court of Appeals for the Fourth Circuit (R. 40) is reported in 87 F. (2d) 594. The petition of the United States for a rehearing was denied without written opinion (R. 56).

JURISDICTION

The judgment of the United States Circuit Court of Appeals was entered January 15, 1937 (R. 45). The petition of the United States for rehearing was denied April 6, 1937 (R. 56). The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether respondent, as owner of a First Liberty Loan 3½% bond of 1932–1947, is entitled to recover the amount of an interest payment for the period June 15, 1935, to December 15, 1935, the bond having been the subject of a notice of call for redemption on June 15, 1935.

STATUTES INVOLVED

This case may be said to involve the monetary legislation of Congress in 1933 and 1934, particularly that legislation which is concerned with the regulation of the value of all coins and currency, with "gold clause" obligations and with the restrictions upon the use of gold coin.

Act of March 9, 1933, c. 1, 48 Stat. 1;
Act of May 12, 1933, c. 25, 48 Stat. 51–53;
Public Resolution No. 10, approved June 5, 1933, c. 48, 48 Stat. 112;
Gold Reserve Act of 1934, approved January 30, 1934, c. 6, 48 Stat. 337.

STATEMENT

The respondent, a resident and citizen of the United States, is the owner of a $1,000 First Lib-

erty Loan 3½% bond of 1932–1947, which he acquired on March 22, 1933 (R. 27, 28). This bond in part provides (R. 18, 19):

> The United States of America for value received promises to pay to the bearer the sum of one thousand dollars on the 15th day of June, 1947, with interest at the rate of three and one-half per centum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. * * *
> All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date and published thereafter from time to time during said three months' period as the Secretary of the Treasury shall direct. * * *
> From the date of redemption designated in any such notice, interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void.

The respondent at no time has held a license to acquire, hold, or in any manner deal with United States gold coin (R. 16).

On March 14, 1935, and from time to time thereafter, the Secretary of the Treasury duly published a notice of call for redemption of First Liberty Loan bonds (R. 16). This notice stated *inter alia* that "All outstanding First Liberty Loan bonds of 1932–47 are hereby called for redemption on June 15, 1935" (R. 20).

The respondent did not surrender or offer to surrender or present for payment his bond, but it has been stipulated that upon proper presentation and surrender of all First Liberty Loan 3½% bonds the United States redeemed them by the payment of legal tender currency equal to the face amount of the bonds and that the Treasury Department refused to pay gold coin therefor (R. 16, 17).

The respondent instituted suit on December 30, 1935, in the United States District Court for the District of Maryland to recover $17.50 upon an interest coupon covering the period from June 15, 1935, to December 15, 1935 (R. 3–10). This coupon was not surrendered or presented for payment but it has been stipulated that the payment of similar interest coupons has been refused by the Treasury Department (R. 17).

On June 23, 1936, the District Court entered judgment in favor of the petitioner herein (R. 14). Upon appeal to the Circuit Court of Appeals for the Fourth Circuit, this judgment was reversed on January 15, 1937 (R. 45–46). A petition for rehearing was denied April 6, 1937 (R. 56).

SPECIFICATION OF ERRORS TO BE URGED

The United States urges that the Circuit Court of Appeals for the Fourth Circuit erred:

1. In failing to hold that the principal of the bond became payable on June 15, 1935, the date designated in the notice of call for redemption, and that the Government's obligation to pay interest then ceased.

2. In holding that the notice of call for redemption was not sufficient to stop the running of interest on the bond after June 15, 1935, the date designated in the notice of call for redemption.

3. In holding that respondent, who at no time has held a license to acquire, hold, or deal with United States gold coin, was entitled to recover interest after the date designated in the notice of call for redemption.

4. In holding the United States liable on an interest coupon which had not been presented and surrendered for payment.

5. In reversing the judgment of the District Court and holding that the plaintiff was entitled to recover.

REASONS FOR GRANTING THE WRIT

The decision of the Circuit Court of Appeals for the Fourth Circuit herein is in conflict with the decisions of the Court of Claims in *Dixie Terminal Company* v. *United States,* 83 C. Cls. 656, and *James D. Smyth* v. *The United States,* decided May 3, 1937, not yet reported.

The decision below was rendered after the decision of the Court of Claims in the *Dixie Terminal* case and prior to the decision of that court in the *Smyth* case. The court below characterized the decision in the former case as "unsound", while the Court of Claims in the *Smyth* case stated that it was "not persuaded" by the opinion in the instant case.

Petitions for certiorari were granted by this Court in the *Dixie Terminal* and *Smyth* cases on June 1, 1937, and those cases are pending as Nos. 43 and 42, 1937 Term. Because of the conflict with the instant decision, and the importance of the question presented, the Government did not oppose the applications for certiorari in those cases.

In view of the foregoing, it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

JULY 1937.

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No. 198.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

THE UNITED STATES OF AMERICA,
Petitioner,

v.

ARTHUR W. MACHEN.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

MEMORANDUM FOR THE RESPONDENT.

H. VERNON ENEY,
Attorney for the Respondent.

In The

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OCTOBER TERM, 1937.

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THE UNITED STATES OF AMERICA,
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v.

ARTHUR W. MACHEN.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

MEMORANDUM FOR THE RESPONDENT.

The Respondent joins with the Petitioner in its request that a writ of certiorari herein be granted. While the Respondent respectfully submits that the decision of the court below is correct, the Respondent agrees that the case should be reviewed by this Court because of the importance of the question presented and the conflict between the decision below and the decisions of the United States Court of Claims in Dixie Terminal Company vs. United States, 83 Ct. Cls. 656, and Smyth vs. United States, not yet reported, decided May 3, 1937, in which cases petitions for certiorari were granted by

this Court on June 1, 1937, the same being now pending as Nos. 42 and 43 on the Docket of this Court for the October Term, 1937.

The Respondent respectfully prays that in the event the petition for certiorari in this case be granted, the case be advanced on the Docket to follow immediately after Nos. 42 and 43 for the reason that said Nos. 42 and 43 involve substantially the same question as this case.

H. VERNON ENEY,

Attorney for the Respondent.

July 31, 1937.